

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE
OF:**

**STEPHEN H. POULTER, CRD#2609991;
BOSTON FINANCIAL, L.L.C.,
CRD#128157**

Respondents.

**EMERGENCY ORDER TO CEASE AND
DESIST AND ORDER TO SHOW
CAUSE**

**Docket No. SD-05-0011
Docket No. SD-05-0012**

Upon authority of § 61-1-6 of the Utah Uniform Securities Act ("Act"), the Utah Division of Securities issues this Emergency Order to Cease and Desist and Order to Show Cause against Stephen H. Poulter and Boston Financial, L.L.C. ("Respondents"). A hearing as described in the attached Notice of Agency Action has been set in this matter and Respondents have a right to appear and defend themselves at the hearing. In connection with this Order, the Director finds and concludes that Respondents' conduct presents an immediate and significant danger to the public welfare, and the threat requires immediate action by the Division. The Director issues this

Emergency Order in accordance with the provisions of § 63-46b-20 of the Utah Administrative Procedures Act (“UAPA”).

FINDINGS

1. Boston Financial, L.L.C. (“Boston Financial”), CRD #128157 is a Utah limited liability company which maintains its principal place of business in Salt Lake City, Utah. Boston Financial was licensed as a state-covered investment adviser from January 23, 2004 until December 31, 2004.
2. Stephen H. Poulter (“Poulter”), CRD#2609991 is the principal and managing member of Boston Financial. Poulter is a resident of North Salt Lake, Utah. Poulter was licensed as an investment adviser representative of Boston Financial from January 23, 2004 until December 31, 2004.
3. On or about December 10, 2004, the Division of Securities (“Division”) received a complaint from a client of Respondents.
4. In response to the complaint, on December 13, 2004, a Division examiner (“examiner”) attempted to conduct an audit of Respondents by traveling to 8 East Broadway Suite 501 and 66 Exchange Place in Salt Lake City, Utah, both of which locations are identified on the CRD and Respondents’ SEC Form ADV - Uniform Application for Investment Adviser Registration (“Form ADV”) as places of business for Respondent. Upon his arrival, however, the examiner learned that Respondents had not been at either location

for a period of months. The examiner also unsuccessfully attempted to reach Respondents at the telephone number disclosed on the Form ADV.

5. The Division e-mailed Poulter on December 13, 2004. In response, Poulter called the Division on December 14, 2004 at which time the Division requested information pertaining to the complaint. The examiner subsequently met briefly with Poulter on December 21, 2004. During the meeting, the examiner attempted to determine whether Respondents kept firm books and records as required by law. The examiner also informed Poulter of potential violations that needed to be corrected, such as the renewal of Respondents' licenses for the following year and payment of the appropriate filing fees.
6. In addition, the Division informed Poulter that an audit was forthcoming and set a date to conduct the audit. The Division discussed with Poulter various requirements of the Utah Uniform Securities Act ("Act") which would be reviewed during the audit, including those contained in Sections 61-1-1 to - 4, -13; Utah Administrative Rules R164-2-1, R164-4-2, R164-4-3, R164-4-4, R164-5-1, R164-5-3, R164-6-1g; and the Securities Exchange Act of 1934 (the "34 Act") as relates to books and records and annual disclosure requirements for investment advisers.
7. The examiner conducted an audit of Respondents on February 15 and 18, 2005, and had a follow-up meeting with Poulter on February 22, 2005 to obtain additional information.

8. The Division's audit revealed numerous violations of the Act, including but not limited to the following:
- a. Respondents are not licensed to transact business in Utah;
 - b. Respondents have shared compensation with non-licensed persons;
 - c. Respondents have failed to maintain books and records as required by Utah law;
 - d. Respondents have not complied with bonding and minimum net worth requirements;
 - e. Respondents have not complied with performance-based fee and client disclosure requirements.

Licensing Violations

9. Section 61-1-3(3) of the Act states:

**It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:
(a) the person is licensed under this chapter. . .**

10. Respondents violated Section 61-1-3(3) because they failed to renew their licenses but continued to act as an investment adviser and investment adviser representative.

Respondents were specifically informed on December 21, 2004 of the requirements to renew licenses for the agent and firm. No attempt was made to renew the licenses until February 2005. After unsuccessfully attempting to renew the licenses through the internet-based Investment Adviser Registration Depository ("IARD") as maintained by NASD, Poulter contacted NASD on February 9, 2005 and made a request to renew his

license, forty-nine days after his meeting with Division, and thirty-nine days after Respondents' licenses lapsed. As of the date of this filing, Respondents are not licensed to act as an investment adviser, broker-dealer, investment adviser representative, or agent in the state of Utah.

11. Section 61-1-3(4)(a) of the Act provides:

It is unlawful for any:

(i) person required to be licensed as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is licensed under this chapter. . .

12. In employing an unlicensed investment adviser representative, Poulter, Boston Financial also violated Section 61-1-3(4)(a)(i).

Sharing Compensation with Unlicensed Person

13. Section 61-1-2(1) states:

It is unlawful for any person who receives consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

(c) divide or otherwise split any consideration with any person not licensed under this chapter as an investment adviser or investment adviser representative.

14. The Division's audit of Respondents revealed that they have shared consideration with two unlicensed persons, Clark Kain and Poulter's ex-wife (name currently unknown) in violation of Section 61-1-2.

Books and Records Violations

14. Section 61-1-5 states:

(1)(a) Every licensed broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the division by rule prescribes. . .

(5) All the records referred to in Subsection (1) are subject at any time or from time to time to reasonable periodic, special, or other examinations by representatives of the division, within or without this state, as the division deems necessary or appropriate in the public interest or for the protection of investors.

15. Rule 164-5-1 of the Utah Administrative Code (“UAC”) provides that:

...each investment adviser licensed or required to be licensed under the Act shall make, maintain, and preserve books and records in compliance with SEC Rule 204-2. . .

16. SEC Rule 204-2 requires, among other things, that an investment adviser maintain the following records for each client as well as additional records not relating to clients.

These records include:

- a. Client Contracts;
- b. Form ADV;
- c. Annual Offer of Disclosure;
- d. Insider Trading Policy;
- e. Client Records;
- f. General and auxiliary ledgers;
- g. All check books, bank statements, canceled checks and cash reconciliations;
- h. All bills or statements, paid or unpaid;
- i. Trial balances, financial statements and internal audit papers;
- j. A list of discretionary accounts;
- k. Powers of attorney and discretionary powers;

- l. Any summary of material changes to Part II of Form ADV that is not included in the written statement;
- m. A record of the delivery dates of the written statements noted above;
- n. Written acknowledgments of receipt obtained from clients and copies of the disclosure documents delivered to clients by solicitors;
- o. All accounts, books, and internal working papers that form the basis of any performance or rates of return used in advertisements;
- p. Written information for each client that forms the basis of suitability determinations;
- q. All documents filed with or received from any state or federal agency or SRO;
- r. Copies of U-4s with original signatures and each disclosure amendment;
- s. Employee personal securities transaction records.

17. Respondent Poulter has had twenty-five clients during the time he has been employed with Boston Financial. At the time of the audit, Respondents did not maintain any of the above required records, and accordingly violated Utah law. The only records maintained by the firm were bank statements and a few bills incurred by Respondents.

18. Section 61-1-5(4) of the Act states:

If the information contained in any document filed with the division is or becomes inaccurate or incomplete in any material respect, the licensee . . . shall promptly file a correcting amendment. . .

19. Respondents' Form ADV and information contained on the CRD indicate that Respondents' business address is located at 8 E. Broadway Ste. 501 and 66 Exchange Place in Salt Lake City, Utah. That information is inaccurate, and was not promptly updated as required by the Act.

Minimum Financial and Bonding Requirements

20. UAC Rule R164-4-5(F)(1) requires that every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000. . .

21. During the Division audit, Poulter indicated that Respondents have discretionary authority over client accounts. Poulter acknowledged, however, that Respondents are not bonded.

Performance-Based Compensation

22. UAC Rule R164-2-1 sets forth requirements for performance-based investment advisory compensation, including but not limited to:

- a. requiring that the client be an “accredited” investor, that is, a person the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or company whose net worth, at the time the contract is entered into, exceeds \$1,500,000.
- b. before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client all material fact information concerning the proposed advisory arrangement, including specific information set forth in the rule.

23. Respondents failed to comply with the above requirements because Respondents manage performance-based fee accounts for investors who are not accredited. Moreover, Respondents have no written investment advisory contracts, and thus failed to make the required material fact disclosures in writing.

EMERGENCY ORDER

In light of the foregoing, and in order to prevent or avoid danger to the public welfare, it is hereby ORDERED in accordance with Utah Code Ann. § 63-46b-20 that:

1. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from acting as an unlicensed investment adviser or investment adviser representative in this State.
Respondents may advise existing clients with regard to closing their accounts, closing open positions, and/or transferring their accounts to a licensed investment adviser or broker-dealer firm;
2. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from sharing compensation with any unlicensed persons; and
3. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from any and all other or further violations of the Act.

Respondents are advised that, pursuant to Utah Code Ann. § 61-1-21(1), any violation of this ORDER is punishable as a third-degree felony.

ORDER TO SHOW CAUSE

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at the place, date and time set forth in the Notice of Agency Action. If Respondents fail to appear at the hearing, a permanent order to cease and desist may be issued and a fine imposed by default against Respondents, as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondents may show cause, if any they have:

1. Why Respondents should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-2, -3, -5, or any other section of the Act;
2. Why Respondents should not be censured and barred from acting as or associating with a licensed broker-dealer or investment adviser within this state.
3. Why Respondents should not be ordered to pay fines to the Division in amounts to be determined at the hearing.

DATED this 14 day of March, 2005.



A handwritten signature in black ink, which appears to read "David M. Preece", is written over a horizontal line.

David M. Preece
Director
Utah Division of Securities

Approved:

A handwritten signature in black ink, which appears to read "Laurie Noda", is written over a horizontal line.

Laurie Noda
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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IN THE MATTER OF:

**STEPHEN H. POULTER, CRD#2609991;
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CRD#128157**

Respondents.

NOTICE OF AGENCY ACTION

**Docket No. SD-05-0011
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THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of mailing of the mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the accompanying Emergency Order to Cease and Desist and Order to Show Cause.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Emergency Order to Cease and Desist and Order to Show Cause.

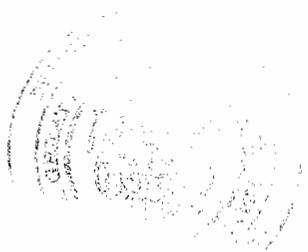
After your response is filed, a hearing will be set at a date and time agreed upon by the parties.

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, you will be held in default, a permanent Order to Cease and Desist will enter, and a fine will be imposed against you in accordance with Utah Code Ann. §64-46b-11 without any further notice to you.

The presiding officer in this case is David N. Preece, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. The Administrative Law Judge will be Clinton D. Jensen, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6021. At such hearing, the Division will be represented by the Utah Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to a hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to Laurie Noda, Assistant Attorney General, 160 E. 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

DATED this 14 day of March, 2005.



A handwritten signature in black ink, appearing to read "David N. Preece", is written over a horizontal line. The signature is fluid and cursive in style.

David N. Preece
Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 14th day of March, 2005, I mailed, by certified mail, a true and correct copy of the Emergency Order to Cease and Desist and Order to Show Cause and Notice of Agency Action to:

Stephen H. Poulter
169 North 550 East
North Salt Lake, UT 84054

Certified Mail # 7004 1160 0004 1730 5029

Pamela Radzinski
Executive Secretary